

The X Club, LLC  
420 East Commercial Avenue  
Lowell, IN 46356

Permit RR 45-19536

## PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

### I BACKGROUND OF THE CASE

The applicant, The X Club, LLC, 420 East Commercial Avenue, Lowell, IN 46356, (“Applicant”) filed its’ application for a type 210 Alcohol and Tobacco Commission (“ATC”) permit, application #RR 45-19536. The ATC assigned the application for hearing before the Lake County Local Board (“LB”). The LB conducted its investigation and hearing regarding this application and voted to recommend approval of the permit but voted to recommend denial of the location, citing no need for such services at this location as their basis. The ATC voted to adopt the recommendation of the LB, and granted the permit itself, but denied issuance at location applied for.

The applicant filed a timely notice of appeal and the appeal was set before ATC Hearing Judge, Daniel M. Steiner (“HJ”). Attorney Joseph F. Quill, One Indiana Square, Suite 2575, Indianapolis, IN 46204, represented the applicant. The remonstrators were not represented by counsel. At that time, witnesses were sworn, evidence was heard and the matter was taken under advisement. At this time, the HJ submits his Proposed Findings of Fact and Conclusions of Law to the ATC for consideration.

### II. EVIDENCE AT THE HEARING

#### A. WITNESSES

The following witnesses were sworn and provided testimony at the appeal hearing:

1. John C McColley (J. McColley) one of the applicants. He is a lifelong resident of Lowell and before applying for this permit, he talked with other businesses in the area, many of whom were favorable toward this application. He said there is a 2-way ATC permittee immediately next to their proposed premises. He said there are thirteen other ATC permittees with one mile of their proposed premises. He stated that he nor none of the other applicants have held an ATC permit before and have never been cited for any ATC violation. That this area of Lowell is zoned for this type of business; that their premises would be a traditional bar with entertainment such as musicians and comedians; that they would serve meals but not have a full dinner menu and that they would not be involved in any form of “adult” entertainment. None of this testimony was rebutted or disputed by

- remonstrators. Through J. McColley, the applicant introduce its' Exhibits 1, 2, 3,4,5,6 and 7.
2. Floyd C. McColley (F McColley) one of the applicants. He is a lifelong resident of Lowell. He is retired from US Steel and has invested in most of the improvements in this premises. Over the years he has been involved Little League, has been a Scout Leader and contributed to numerous local activities and charities. Through F. McColley, applicant's exhibit 8 was introduced.
  3. Mona Kuechenberg (Kuechenberg). She is active in the downtown business association in Lowell. She does not represent that association, but believes this premises would be good for other businesses in the area. She stated that the McColley's are well thought of in the community and are very involved in community functions. Through Kuechenberg, applicant's exhibits 9, 10 and 11 were introduced.
  4. Peter Yaselsky (Yaselsky). He has a business in downtown Lowell with his wife, Mona Kuechenberg. He is president of the downtown business association and believes this premises would be beneficial to the town and this district.
  5. Connie Newsome (Newsome) one of the Applicants. She does not currently have an active business in downtown Lowell, but has been active in the business association. She believes their business would be unique to the area. Through Newsome, applicant' exhibits 12 and 13 were introduced.
  6. Charles J. Bukovac (C Bukovac) a resident of Lowell opposed to this permit. He stated he is Chairman of the Lowell Labor Day Organization. He is opposed to this permit because of past experience with other permittees in Lowell over serving patrons during the Labor Day celebration.
  7. Joan Bukovac (J Bukovac) a resident of Lowell opposed to this permit. She is opposed to this permit because she thinks it would attract the wrong type of crowd and the town needs more shops, not bars. The Bukovacs do not live in proximity to the proposed premises.
  8. Diane Boylan (Boylan) a resident of Lowell opposed to this permit. She stated that J McColley is not on good terms with the people who operate the 2-way ATC premises next to the applicant's proposed premises. She says this premises would cause parking congestion in the downtown Lowell. She also does not live in proximity to the proposed premises.
  9. Joy Anderson (Anderson) who is the lead remonstrator. She does reside in proximity to the proposed premises, approximately within 250 feet of the rear thereof. She says when the applicants operated this location as a teen club, she on one occasion called the police because of noise coming from the building. She stated that the residents of the area are opposed to the premises, but later

acknowledged that during her petition drive there were residents who she did not contact but did not give the reason she didn't. She acknowledged there are residents who live in apartments whom she did not contact. She knows when she moved here there were other ATC permittees located in near vicinity. Also, she works for the above referenced 2-way permittee next to these proposed premises. Through Anderson, remonstrators' exhibits A, B and C were offered.

B.  
EXHIBITS

The following exhibits were offered at the ATC appeal hearing:

1. Applicant's Exhibits 1, a photo of the inside of the premises;
2. Applicant's Exhibit 2, a photo of the front of the premises;
3. Applicant's Exhibit 3, a street map of the town of Lowell;
4. Applicant's Exhibit 4, a petition in support of this application, was admitted over objection, with signatures from the following towns excluded because of lack of proximity to the town of Lowell and the proposed premises: Merrillville, Lake Village, Hammond, Kouts, Hobart, Valparaiso, DeMotte, Gary, Portage, Chesterton, Wheeler, Highland, all in Indiana, and Steger, IL, and all other locations outside Lake County, Indiana.
5. Applicant's Exhibit 5, a letter of support from the McNally Dental Center;
6. Applicant's Exhibit 6, a photo of the front of the proposed premises;
7. Applicant's Exhibit 7, a photo of the front of the proposed premises;
8. Applicants Exhibit 8, consisting of three photos of F McColley and his band, was admitted over an objection of relevance.
9. Applicant's Exhibit 9, a narrative of Kuechenberg and Yaselsky in support of this application;
10. Applicant's Exhibit 10, in two parts, a narrative of Kuechenberg in support of this application;
11. Applicant's Exhibit 11, in twenty five parts, copies of photos of various areas and businesses of Lowell;
12. Applicant's Exhibit 12, a copy of the April 11, 2000, Lowell Tribune;
13. Applicant's proposed Exhibit 13 was not offered into evidence; and,

14. Applicant's Exhibit 14, a plat and street map of downtown Lowell, were all admitted into evidence without objection.
15. Remonstrators' Exhibit A, a map of downtown Lowell admitted without objection.
16. Remonstrators' Exhibit B, a Lowell phone book admitted without objection.
17. Remonstrators' Exhibit C, another map of the town of Lowell was admitted over objection of undue prejudice.

The HJ took administrative notice of the file herein. It was noted that the Remonstrators' Petition submitted at the LB hearing from page 7 to the end, with the exception of the signatures of three teachers on page 7, were signatures with whom the remonstrators were not familiar, whose ages could not be ascertained to determine if they were signatures of persons above the age of 18. Therefore, all signatures of students on said Petition cannot be considered as evidence.

### III. FINDINGS OF FACT

1. The Applicant, The X Club, LLC, 420 Commercial Avenue, Lowell, IN 46356 has filed an application for a type 210 ATC permit, application RR45-19536. (ATC file)
2. The LB recommended denial application for the reason that there is no need for the services at this location. (ATC Permit file)
3. This recommendation is contrary to the legally admissible evidence at the LB and ATC Appeal Hearing, which establishes conclusively that more people in the relevant area who expressed an opinion either by Petition, letter or by live testimony, support rather than object to the issuance of this permit. (ATC permit file, record of LB proceedings and ATC appeal hearing).
4. The testimony at the ATC hearing of C Bukovac as to previous alleged violations of over serving by other ATC permittees is irrelevant as to this Applicant and the testimony of C Bukovac. (ATC appeal hearing).
5. The testimony of J Anderson must be closely scrutinized because of the fact that she is an employee of a competing permittee and for the fact that her original contention that her neighborhood is opposed to this permit was later partially contradicted by her acknowledgment that she did not actually contact a number of residents in that neighborhood. Further, she did not offer an explanation for not contacting them. (ATC appeal hearing).

6. There is no evidence that the Applicants are not legally qualified to hold an ATC permit. There is no evidence they do not meet the requirement for fitness and reputation in the community. The evidence that their proposed premises is properly zoned and that they would conduct their proposed premises in lawful manner was not contradicted or rebutted. (ATC permit file, LB record of proceedings and ATC appeal hearing).
7. Any Conclusion of Law included in the foregoing Findings of Fact shall be deemed part of the ATC Conclusions of Law.

#### IV.

#### CONCLUSIONS OF LAW

1. The Applicant, The X Club, LLC, 420 Commercial Avenue, Lowell, IN 46356, is an applicant for a type 210 ATC permit, Application RR45-19536. (ATC appeal file).
2. The LB recommended this application be denied as to location because of lack of need for the services at the location. (record of LB proceedings).
3. The weight of the evidence is conclusively that there is a need and desire for these services at this location, as evidenced by the fact that the majority of persons in the relevant area who stated an opinion by Petition, letter or live testimony, stated their support for issuance of this permit at the proposed location. Therefore, the finding of the LB of no need, must fail. (ATC appeal hearing and LB record of proceedings).
4. There is no evidence that this application should be denied for any other legal reason and the evidence is that the permittee is fully qualified to hold this permit at the proposed location. (ATC permit file, LB record of proceedings and ATC appeal hearing).
5. Therefore, the recommendation of the LB must fail for the reasons it is not in accordance with the law and it is unsupported by substantial evidence. (IC 7.1-3-19-11).
6. Any Finding of Fact included in the foregoing Conclusions of Law shall be deemed part of the ATC Finding of Fact.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the recommendation of the LB to deny the location of this permit at the proposed premises should be and the same hereby is reversed and the Permit at the proposed location of 420 Commercial Avenue, Lowell, IN 46356 is granted.

Date: \_\_\_\_\_

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Daniel M. Steiner, Hearing Judge